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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EMILY SEARS, et al.,

Plaintiff(s),

v.

RUSSELL ROAD FOOD AND
BEVERAGE, LLC, et al.,

Defendant(s).

Case No.: 2:19-cv-01091-APG-NJK

ORDER

(Docket No. 41)

12 Pending before the Court is the parties' motion to temporarily stay proceedings. Docket
13 No. 41. Specifically, the parties ask to stay discovery pending decisions on Defendants' motions
14 to dismiss "and/or resolution of the COVID-19 [] issues." *Id.* at 2. The parties ask for a "stay of
15 at least forty-five [] days, or pending the rulings on the motions to dismiss, and/or whatever time
16 period the Court deems fair for the Parties." *Id.* at 5.

17 The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of*
18 *Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). "The mere fact that parties stipulate to a stay does not
19 limit the Court's discretion to order a stay." *Estate of Evans v. Kinecta Fed. Credit Union*, 2014
20 WL 12790972, at *1 (D. Nev. June 27, 2014). "The Federal Rules of Civil Procedure do not
21 provide for automatic or blanket stays of discovery when a potentially dispositive motion is
22 pending." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). Discovery should
23 proceed absent a "strong showing" to the contrary. *See, e.g., Turner Broadcasting Sys., Inc. v.*
24 *Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997).

25 The case law in this District makes clear that requests to stay discovery may be granted
26 when: (1) the pending motion is potentially dispositive; (2) the potentially dispositive motion can
27 be decided without additional discovery; and (3) the Court has taken a "preliminary peek" at the
28 merits of the potentially dispositive motion and is convinced that the plaintiff will be unable to

1 state a claim for relief. *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).¹
2 When stipulating to a stay of discovery, the parties have the burden to show that discovery should
3 be stayed. *See Kabo Tools Co. v. Porauto Indus. Co.*, 2013 WL 5947138, at *1 (D. Nev. Oct. 31,
4 2013).

5 The Court finds that all the standards are not met; therefore, a stay of discovery based on
6 the pending motions to dismiss, Docket Nos. 14, 16, is inappropriate here. The Court finds that
7 the motions to dismiss are potentially dispositive and that they can be decided without discovery.
8 The Court is not convinced, however, that the motions to dismiss “will prevail, and therefore,
9 discovery [would be] a waste of effort.” *Trazaska v. Int’l Game Tech.*, 2011 WL 1233298, at *3
10 (D. Nev. Mar. 29, 2011). Accordingly, the Court will deny in part the parties’ instant motion as
11 to the pending motions to dismiss as a basis for a stay of discovery.

12 The parties also submit that COVID-19 has “infringe[d] on [their] ability to conduct and
13 meaningfully participate in the discovery process[.]” Docket No. 41 at 9. Specifically, the parties
14 submit:

15 At least two of the Plaintiffs were scheduled to attend their
16 depositions in person, and now have significant fears about traveling
17 to Las Vegas, Nevada from their respective homes in Southern
18 California and England, and even yesterday the United States
19 government suspended travel to the United States from Europe.
20 Plaintiff Davalos is approximately nine (9) months pregnant and has
21 already been placed on travel restrictions from a physician, and as
22 such she was already restricted in having her deposition taken in the
23 allotted time frame in Nevada. Further, the remaining Plaintiffs are
24 also from different states, outside of Nevada. Defendant wishes to
25 take the in-person videotaped depositions of Plaintiffs in Las Vegas,
26 Nevada, the Plaintiffs’ chosen venue. However, numerous entities
27 are now cancelling events, restricting travel, and recommending
28 persons to stay at home in isolation, including the Center for Disease
Control, thereby making depositions in-person or by any means,
significantly impeded.

¹ Conducting the preliminary peek puts the undersigned in an awkward position because the assigned district judge who will decide the motion to dismiss may have a different view of its merits. *See Tradebay*, 278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of that motion is not intended to prejudice its outcome. *See id.* As a result, the undersigned will not discuss the merits of the pending motion to dismiss here. Still, the undersigned has carefully reviewed the arguments in the motion to dismiss and later briefing.

1 *Id.* Due to the parties' infringed ability to meaningfully participate in the discovery process
2 because of COVID-19, the Court will grant in part the parties' instant motion as to this basis for a
3 stay of discovery.

4 For the reasons stated above, the Court **GRANTS** in part the parties' instant
5 motion. Docket No. 41. Discovery in this case is stayed until, April 27, 2020, forty-five days
6 from this order. No later than April 30, 2020, the parties shall submit a joint proposed
7 discovery plan for the remainder of discovery in this case.

8 IT IS SO ORDERED.

9 Dated: March 13, 2020

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12 Nancy J. Koppe
13 United States Magistrate Judge
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